

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

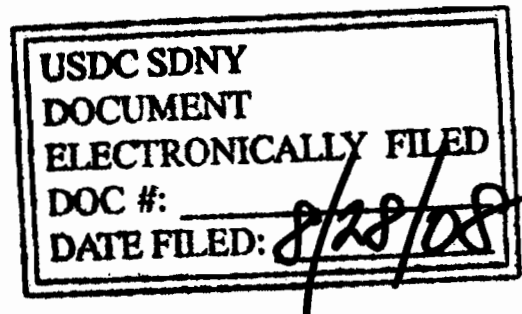
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JOSEPH MURPHY et al.,

Plaintiffs,

-against-

ALLIED WORLD ASSURANCE
COMPANY (U.S.), INC. and ARCH
INSURANCE COMPANY,

Defendants.
-----X



08 Civ. 4196 (GEL)

ORDER

GERARD E. LYNCH, District Judge:

In a letter dated August 13, 2008, co-counsel for plaintiff Tone N. Grant informed the Court that defendant Allied World Assurance Company (U.S.), Inc. ("AWAC") has unilaterally suspended the advancement of defense costs to Grant. (See Ltr. from Blake T. Hannafan to the Court, Aug. 13, 2008, at 1.)

Counsel for AWAC responded on August 14, 2008, arguing that after Grant was sentenced on August 7, 2008, his criminal conviction on charges arising out of the Refco fraud triggered an exclusion in the AWAC policy that barred him from coverage. AWAC thus contends that it is now entitled to repayment of the monies it has advanced to Grant. (See Ltr. from John D. Hughes to the Court, Aug. 14, 2008, at 2.)

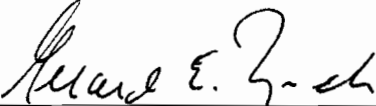
Grant's co-counsel replied in a letter dated August 19, 2008, claiming that AWAC's letter "is plainly improper as a matter of procedure and is also wrong on the merits." (Ltr. from Norman L. Eisen to the Court, Aug. 19, 2008, at 1.) In particular, Grant's co-counsel contends that "[t]he complex factual and legal issues presented by [AWAC's] claim can only be properly decided on formal motion[] practice, not by what amounts to a demand letter." (Id.)

Having carefully considered the parties' submissions, the Court concludes that AWAC's decision to unilaterally suspend advancement of defense costs to Grant is in clear violation of the April 21, 2008, Order of the Bankruptcy Court, which requires AWAC to advance fees to the insureds "pending a final determination as to coverage for the [insureds] under the Allied World Policy."

Accordingly, it is hereby ORDERED that AWAC shall immediately advance to Grant all defense costs incurred prior to Grant's August 7, 2008, sentencing. A final determination regarding Grant's coverage under the AWAC policy must await resolution of the pending summary judgment motion filed by AWAC against all insureds (see Doc. # 21), and/or the initiation of separate motion practice by AWAC specifically with regard to Grant's coverage under the AWAC policy.

SO ORDERED.

Dated: New York, New York
August 28, 2008



GERARD E. LYNCH
United States District Judge